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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE

Office: Buffalo

Date:

JAN 27 2003

IN RE: Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 341(a) of
the Immigration and Nationality Act, 8 U.S.C. § 1452(a)

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

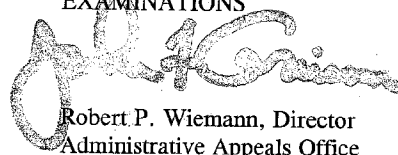
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on May 8, 1957, in Jamaica. The father is unnamed on the birth certificate. The applicant's mother, [REDACTED] was born in January 1938 in Jamaica and acquired U.S. citizenship at birth through her mother. The applicant's parents never married each other. The applicant claims that he acquired United States citizenship through his mother at birth under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), as a child legitimated under Jamaican law, or under section 309 of the Act, 8 U.S.C. § 1409, as a child born out of wedlock.

The applicant was lawfully admitted for permanent residence on May 8, 1974, and never filed a petition for naturalization. The applicant's mother resided in Jamaica until 1974 when she moved to the United States.

The district director determined that the record failed to establish that, at the time of the applicant's birth, the applicant's United States citizen parent had been physically present in the United States or one of its outlying possessions for 10 years, at least 5 of which were after age 14, as required under section 301(g) of the Act.

The district director also determined that the record failed to establish that the applicant's U.S. citizen mother had at least one year of continuous residence in the United States prior to the applicant's birth.

In addition, the district director determined that the applicant failed to qualify for the benefits of the Child Citizenship Act of 2000 (the CCA), effective on February 27, 2001, because he was over the age of 18 years.

On appeal, the applicant disagrees with the decision and argues that the statute adds an additional burden on the applicant's mother.

Section 301(g) of the Act in effect prior to November 14, 1986, provides, in pertinent part, that a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

Section 309(c) of the Act states, in pertinent part, that:

Notwithstanding the provision of subsection (a) of this section, a person born after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

The record establishes that the applicant's mother never resided in the United States until 1974, 17 years after the applicant's birth. The applicant has failed to establish that his mother met the physical presence requirements of the appropriate statutes. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.